FFM Marketing Sdn Bhd v Azrim Saleemi bin Abdul Karim & Ors

HIGH COURT (SHAH ALAM) — JUDICIAL REVIEW NO BA-25–27–05 OF 2017
ABD MAJID JC
25 JANUARY 2019

Civil Procedure — Judicial review — Application for — Judicial review against decision of Director General of Labour (presiding officer) in deciding to proceed with summons — Whether presiding officer erred in law and/or acted in access of jurisdiction in exercising his statutory discretion to proceed with full hearing of summons

The first respondent was employed by the applicant as a truck sales supervisor whereas the second respondent was working under the employment of the applicant as a truck sales representative. Both the respondents had lodged a complaint with the Director General of Labour ('the DGL') that they were not paid for their overtime wages and in addition the first respondent sought the return of the deductions made to his commission and allowances as a result of an accident involving the motor lorry driven by him. The DGL had issued a compliance notice dated 4 October 2016 ('the compliance notice') to the applicant directing the latter to pay the overtime wages to the first respondent after being satisfied that truck sales supervisors were employees within the first schedule of the Employment Act 1955 ('the Act') and to reimburse the deductions made. The DGL then acting under sub-s 69(1)(a) of the Act issued a letter to the applicant requesting the latter to pay a sum of RM70,491.94 if the latter did not resist the claim or else be present for the mention of the summons. The summons was mentioned on 17 January 2017 where some preliminary objections were raised. Nevertheless, the presiding officer vide a written decision dismissed the preliminary objections and decided to proceed with the hearing of the summons. In the present action, the applicant sought for a judicial review over the decision of the DGL ('the presiding officer') dated 10 April 2017 pertaining to the summons, in deciding to proceed with the hearing of the first and second respondents' complaint and prays. The issue arose was whether the presiding officer erred in law and/or acted in access of his jurisdiction in exercising his statutory discretion to proceed with the full hearing of the summons.

Held, dismissing the application with costs:

(1) The impugned decision made on 10 April 2017 was the ruling made by the presiding officer in holding an inquiry under s 69 of the Act. The said

ruling came about after the applicant raised a preliminary objection. Having made the ruling, the presiding officer ordered the parties to prepare to call witnesses and produce documents for the hearing of the inquiry. Hence, the impugned decision was not final. At the end of the day the applicant would be able to file an appeal against the decision of the inquiry. Clearly what the applicant was doing was to fragment the decision. It was a ruling rather than a decision which did not dispose of the rights of the applicant. Therefore, the ruling was not amenable to judicial review (see paras 23–24).

(2) The DGL had not prejudged the issue by issuing the compliance notice as it had no binding effect. It was evident that when there was no response from the applicant, the summons was issued and the inquiry was set up. The question whether the matter was under sub-s 69(1)(a) or (b) of the Act would only be decided by the inquiry. The compliance notice was unnecessary however it did not render the summons illegal. It was a separate and distinct from the summons. Inquiry under s 69 of the Act was independent and stand by itself and was not premised upon any initial investigation. Even if the compliance notice was illegal or unlawful, the summons was not tainted (see paras 25–26).

(3) If the court allowed the application by quashing the ruling which would amount to allowing the preliminary objection, that would be the end of the matter and the first and second respondents would have no other recourse. That would not be proper as here the proceedings had been instituted ie the inquiry and s 86 of the Act only provided where such proceedings had been withdrawn (see para 27).

[Bahasa Malaysia summary

Responden pertama diambil bekerja oleh pemohon sebagai penyelia jualan trak manakala responden kedua bekerja di bawah pemohon sebagai wakil jualan trak. Kedua-dua responden telah mengemukakan aduan kepada Ketua Pengarah Buruh ('DGL') bahawa mereka tidak dibayar untuk gaji lebih masa mereka dan sebagai tambahan responden pertama meminta pengembalian potongan yang dibuat kepada komisen dan elaun akibat satu kemalangan yang melibatkan lori motor yang dipandu olehnya. DGL telah mengeluarkan notis pematuhan bertarikh 4 Oktober 2016 ('notis pematuhan tersebut') kepada pemohon yang mengarahkan pemohon untuk membayar gaji lebih masa kepada responden pertama setelah berpuas hati bahawa penyelia jualan trak adalah pekerja dalam jadual pertama Akta Kerja 1955 ('Akta') dan membayar balik potongan yang dibuat. DGL yang kemudiannya bertindak di bawah sub-s 69(1)(a) Akta mengeluarkan surat kepada pemohon yang meminta pemohon membayar sejumlah RM70,491.94 jika pemohon tidak menentang tuntutan tersebut atau jika tidak perlu hadir untuk sebutan saman tersebut. Saman tersebut disebut pada 17 Januari 2017 di mana beberapa bantahan awal dibangkitkan. Walau bagaimanapun, pegawai pengerusi melalui keputusan

A bertulis telah menolak bantahan awal dan memutuskan untuk meneruskan pendengaran saman tersebut. Dalam tindakan ini, pemohon meminta semakan kehakiman atas keputusan DGL ('pegawai pengerusi') yang bertarikh 10 April 2017 berhubung dengan saman tersebut, dalam memutuskan untuk meneruskan pendengaran aduan dan permohonan responden pertama dan B kedua. Isu yang timbul adalah sama ada pegawai pengerusi menyalahi undang-undang dan/atau bertindak di luar bidang kuasanya dalam menjalankan budi bicara statutorinya untuk meneruskan pendengaran penuh saman tersebut.

C **Diputuskan**, menolak permohonan dengan kos:

(1) Keputusan yang dipersoalkan pada 10 April 2017 adalah keputusan yang dibuat oleh pegawai pengerusi dalam mengadakan siasatan di bawah s 69 Akta. Keputusan tersebut berlaku selepas pemohon menimbulkan D bantahan awal. Setelah membuat keputusan itu, pegawai pengerusi memerintahkan pihak-pihak bersedia untuk memanggil saksi dan mengemukakan dokumen untuk pendengaran siasatan. Justeru, keputusan yang dipersoalkan itu tidak muktamad. Akhirnya pemohon akan dapat memfailkan rayuan terhadap keputusan siasatan. Jelas apa E yang dilakukan pemohon adalah untuk memecahkan keputusan. Ia adalah perintah dan bukan keputusan yang tidak membuang hak pemohon. Oleh itu, perintah itu tidak boleh diterima untuk semakan kehakiman (lihat perenggan 23–24).

F (2) DGL tidak menghukum terlebih dahulu isu ini dengan mengeluarkan notis pematuhan kerana ia tidak mempunyai kesan mengikat. Adalah jelas bahawa apabila tiada jawapan daripada pemohon, saman itu dikeluarkan dan siasatan itu diadakan. Persoalan sama ada perkara itu di bawah sub-s 69(1)(a) atau (b) Akta hanya akan diputuskan oleh siasatan. G Notis pematuhan adalah tidak perlu tetapi tidak menyebabkan saman itu tidak sah. Ia adalah berasingan dan berbeza daripada saman. siasatan di bawah s 69 Akta adalah bebas dan berdiri dengan sendirinya dan tidak didasarkan pada apa-apa siasatan awal. Walaupun notis pematuhan adalah tidak sah atau menyalahi undang-undang, saman itu tidak cacat H (lihat perenggan 25–26).

(3) Sekiranya mahkamah membenarkan permohonan tersebut dengan membatalkan perintah yang akan membenarkan bantahan awal, ia akan menjadi penghujung perkara tersebut dan responden pertama dan kedua I tidak akan mempunyai apa-apa cara lain. Ianya tidak patut kerana prosiding telah dimulakan iaitu siasatan dan s 86 Akta hanya terpakai di mana prosiding sedemikian telah ditarik balik (lihat perenggan 27).]

Notes

For cases on application for judicial reviews, see 2(3) *Mallal's Digest* (5th Ed, 2017 Reissue) paras 5937–5949.

Cases referred to

Abd Razak bin Atan v Dato' Hj Ahmad Ragib bin Hj Mohd Salleh (sued in his capacity as Assistant Chief Administrator to the Inspector General of Police (Disciplinary) & Ors [2010] 3 MLJ 753; [2010] 4 AMR 496, CA (refd)

Ahmad Jefri bin Mohd Jahri @ Md Johari v Pengarah Kebudayaan & Kesenian Johor & Ors [2010] 3 MLJ 145; [2010] 5 CLJ 865, FC (refd)

Australian Postal Corporation v Barry [2006] FCA 1751, FC (refd)

Central Holdings Management Services Sdn Bhd v Muhammad Zailani bin Mat Zin & Ors [2006] 7 MLJ 402; [2006] 6 CLJ 197, HC (refd)

Craig v The State of South Australia [1995] 184 CLR 163, HC (refd)

Harpers Trading (M) Sdn Bhd v National Union of Commercial Workers [1991] 1 MLJ 417; [1991] 1 CLJ Rep 159, SC (refd)

Kaneka Paste Polymers Sdn Bhd v Director General of Industrial Relations & Ors [2005] 7 MLJ 132; [2005] 5 MLRH 86, HC (refd)

L Rajanderan a/l R Letchumanan v Timbalan Menteri Dalam Negeri, Malaysia & Ors [2018] Supp MLJ 393; [2010] 7 CLJ 653, FC (refd)

Marlin bte Rajiman & Ors v MAA Services Sdn Bhd [1994] 2 MLJ 404, SC (refd)

Menteri Besar Negeri Pahang Darul Makmur v Seruan Gemilang Makmur Sdn Bhd [2010] 4 MLJ 360; [2010] 5 AMR 220, CA (refd)

Mui Bank Bhd Johor v Tee Puat Kuay [1993] 3 MLJ 239; [1993] 4 CLJ 69, HC (refd)

O' Reilly v Mackman [1983] 2 AC 237, HL (refd)

Pendaftar Pertubuhan Malaysia v Establishmen Tribunal Timbangtara Malaysia & Ors [2011] 6 CLJ 684, HC (refd)

Shun Fat Container Service Co Ltd & Ors v Commissioner for Transport [1989] 2 HKC 301, HC (refd)

Syarikat Kenderaan Melayu Kelantan Bhd v Transport Workers' Union [1995] 2 MLJ 317; [1995] 2 CLJ 748, CA (refd)

Taylor's College Sdn Bhd v Ketua Pengarah Kesatuan Sekerja Malaysia & Ors [2009] 3 MLJ 437, CA (refd)

The British School of Kuala Lumpur Sdn Bhd v Menteri Sumber Manusia Malaysia & Ors [2016] 1 ILR 289, IC (refd)

Legislation referred to

Dangerous Drug (Special Preventive Measures) Act 1985

Employment Act 1955 ss 4, 6(1)(a), 69, 69(1)(a), (1)(b), 70, 70(c), 86, Parts XIV, XV, First Schedule

Internal Security Act 1960 (repealed by the Security Offences (Special Measures) Act 2012) s 6

Rules of Court 2012 O 53 r 3(6)

Lim Heng Seng (Lee Hishammuddin Allen & Gledhill) for the appellant.
Avatar Singh (Mohd Latip & Assoc) for the first and second respondents.
Zaliha Mohd Janis (Senior Federal Counsel, Selangor State Legal Advisor's Office) for the third respondent.

Abd Majid JC:

[1] The applicant is seeking for a judicial review over the decision of the Director General of Labour ('the presiding officer') dated 10 April 2017 pertaining to Kes Saman Ketua Pengarah No KBR/1040/2016/0710 ('summons') in deciding to proceed with the hearing of the first and second respondents' complaint and prays for the following declaration:

(a) an order for certiorari to remove into this honourable court for the purpose of it being quashed the decision of the Director General of Labour, the third respondent herein, dated 10 April 2017 pertaining to the Director General Summons Case No KBR/10401/2016/0710 ('Director General summons case') which decided to proceed to hear the complaint of the first and second respondents;

(b) the following declarations:

(i) a declaration that the third respondent has no power and/or jurisdiction to enquire into complaint of the first respondent;

(ii) a declaration that the third respondent has no power and/or jurisdiction to enquire into complaint of the second respondent;

(iii) a declaration that the first and second respondents do not have a common cause for complaint against the applicant;

(iv) a declaration that the compliance notice dated 4 October 2016 which found that the truck sales supervisors are employees within the ambit of the Employment Act 1955 ('the EA 1955') is null and void and ineffective;

(v) a declaration that the first respondent is not entitled to overtime payment under the terms and conditions of his contract of service;

(vi) a declaration that the second respondent is not entitled to overtime payment under the terms and conditions of his contract of service; and

(vii) a declaration that the applicant's truck sales supervisors are not persons included in any category in the First Schedule of the EA 1955 and therefore not employees within the ambit of the EA 1955;

(c) that all necessary and consequential directions and orders be given; A

(d) the cost and incidental costs of this application be provided; and

(e) all other and further relief which this honourable court deems fit and proper.

B

[2] The grounds are as follows:

(a) error of law — non-existence of jurisdictional or precedent fact;

(b) error of law — failure to take into account a relevant consideration; C

(c) error of law — procedural impropriety;

(d) DGL has prejudged the dispute; and

(e) the summons is tainted.

D

[3] The first respondent was a truck sales supervisor after being promoted from a truck sales representative under the employment of the applicant since 2 May 2012 and resigned on 30 September 2016. The second respondent was a truck sales representative under the employment of the applicant since 21 March 2012 and left on 25 February 2016. It was alleged that the second respondent had abandoned his employment without any notice. E

[4] Both respondents subsequently on 21 September 2016 lodged a complaint with the Director General of Labour ('DGL') that they were not paid for their overtime wages and in addition the first respondent seeks the return of the deductions made to his commission and allowances as a result of an accident involving the motor lorry driven by him. The chronology of events thereafter is as follows: F

(a) the DGL issued a compliance notice dated 4 October 2016 to the applicant directing the latter to pay the overtime wages to the first respondent after being satisfied that truck sales supervisors were employees within the First Schedule of the Employment Act 1955 ('the Act') and to reimburse the deductions made; G

(b) the applicant submitted an objection dated 17 November 2016. The DGL did not respond to this objection; H

(c) on 28 December 2016 the DGL acting under sub-s 69(1)(a) of the Act issued a letter to the applicant requesting the latter to pay a sum of RM70,491.94 if the latter did not resist the claim or else be present for the mention of the summons on 17 January 2017; I

(d) the summons was mentioned on 17 January 2017 where some preliminary objections were raised; and

(e) the presiding officer vide a written decision dismissed the preliminary objections and decided to proceed with the hearing of the summons.

[5] The issue for determination is whether the presiding officer erred in law and/or acted in access of his jurisdiction in exercising his statutory discretion to proceed with the full hearing of the summons.

SUBMISSIONS

The applicant

[6] Learned counsel for the applicant submitted s 69 for the purposes of this case envisaged two legal premises namely, one under the contract of service and another under the Act. The summons was issued under sub-s 69(1)(a) of the Act therefore it fell within the contract of service. In such case the DGL ought to have ascertained from the contract of service whether overtime wages is provided for in respect of both respondents, which is none, hence, there was no precedent fact to trigger the DGL to assume his authority under sub-s 69(1)(a) of the Act. He referred to *Judicial Review Handbook* (6th Ed) by Michael Fordham QC, and *Pendaftar Pertubuhan Malaysia v Establishmen Tribunal Timbangtara Malaysia & Ors* [2011] 6 CLJ 684 and *Craig v The State of South Australia* [1995] 184 CLR 163.

[7] He further submitted that the respondents have no cause of action as their contracts of service do not provide for overtime and that the DGL should have referred to the respondents' contracts of service to see whether they have a valid cause of action against the applicant. In support he cited the case of *Australian Postal Corporation v Barry* [2006] FCA 1751.

[8] It was further submitted by learned counsel for the applicant that the DGL had failed to take into account that the contracts of service make no provision for overtime, therefore, it was illegal for the DGL to initiate the summons. References were made to *Mui Bank Bhd Johor v Tee Puat Kuay* [1993] 3 MLJ 239; [1993] 4 CLJ 69 and *The British School of Kuala Lumpur Sdn Bhd v Menteri Sumber Manusia Malaysia & Ors* [2016] 1 ILR 289.

[9] As regards the presiding officer learned counsel submitted that she has also erred in taking onto account irrelevant consideration in that she should hear the witnesses in order to decide whether the respondents were employees under the Act.

[10] Learned counsel for the applicant further contended that there was procedural impropriety in that there was non-compliance with s 70(c) of the Act. The DGL had failed to satisfy himself that 'the complaint discloses matters

which in his opinion ought to be inquired into' in the sense that he did not ascertain whether the contracts of service provide for overtime before issuing the summons. Learned counsel cited *O' Reilly v Mackman* [1983] 2 AC 237 where the court has to decide whether the procedure was mandatory or otherwise and *Central Holdings Management Services Sdn Bhd v Muhammad Zailani bin Mat Zin & Ors* [2006] 7 MLJ 402; [2006] 6 CLJ 197 where it was held the provisions of ss 69 and 70 were mandatory.

[11] It was further pointed out that the DGL had by the compliance notice opined that the respondents were employees under the Act and by proceeding with the summons he would be bias as he had prejudged the issue and that the presiding officer was his subordinate. It was also submitted that under Part XIV of the Act the power of the DGL is to conduct inspections and enquiries and not to adjudicate a complaint and to issue a compliance notice. The dispute resolution mechanism can only be found in Part XV of the Act. Hence, there was a violation of statutory provisions (*Syarikat Kenderaan Melayu Kelantan Bhd v Transport Workers' Union* [1995] 2 MLJ 317; [1995] 2 CLJ 748). The summons, according to learned counsel for the applicant was therefore tainted.

The first and second respondents

[12] Learned counsel for the first and second respondents in his response submitted that the applicant was out of time in filing this judicial review as it was filed on 30 May 2017 which was beyond three months as provided under O 53 r 3(6) of the Rules of Court 2012 citing *Menteri Besar Negeri Pahang Darul Makmur v Seruan Gemilang Makmur Sdn Bhd* [2010] 4 MLJ 360; [2010] 5 AMR 220 where it was held that compliance with the time frame was fundamental.

[13] He further submitted that the summons should be allowed to proceed in order to adjudicate the complaint based on witnesses' testimonies and should not rely on documents alone. He referred to *Marlin bte Rajiman & Ors v MAA Services Sdn Bhd* [1994] 2 MLJ 404 which dealt with Industrial Court and that the same principles should apply.

[14] The impugned decision made on 10 April 2017 was premised on the preliminary objections raised by the applicant which was dismissed by the presiding officer. The preliminary objection pertained to the compliance notice, the complainants not being employees under the Act and the Labour Office has no jurisdiction to deal with the issues stemmed from the compliance notice. In dismissing the preliminary objection, the presiding officer held that although the purpose of the hearing was to decide on the complaints raised by the employees and also on the issue whether the respondents were employees under the Act.

[15] Learned counsel contended that the issue over the compliance notice has been overtaken by event ie the summons itself. The applicant complained that they were not given the opportunity to be heard before the compliance notice was issued however, now with the full hearing being set, the applicant would be able to ventilate their case.

[16] It was further pointed out that what were available before the presiding officer when the preliminary objection was raised were the two letters dated 17 November 2016 where the applicant questioned the issuance of the compliance notice and 13 March 2017 from the solicitors for the respondents responding to the preliminary objection. The court should not in a judicial review disturb the ruling by the presiding officer. Learned counsel referred to *Shun Fat Container Service Co Ltd & Ors v Commissioner for Transport* [1989] 2 HKC 301 cited in *Abd Razak bin Atan v Dato' Hj Ahmad Ragib bin Hj Mohd Salleh (sued in his capacity as Assistant Chief Administrator to the Inspector General of Police (Disciplinary) & Ors* [2010] 3 MLJ 753; [2010] 4 AMR 496.

[17] Learned counsel further contended that notwithstanding the DGL referred to sub-s 69(1)(a) of the Act instead of (1)(b), the i nquiry could also consider whether the complaint or dispute involved any provisions of the Act (sub-s 69(1)(b)).

[18] It was also the submission of learned counsel that the decision of the presiding officer was not a final decision as she has yet to hear the witnesses.

[19] Learned counsel also submitted that the dispute between the parties was a private law matter and he referred to *Ahmad Jefri bin Mohd Jahri @ Md Johari v Pengarah Kebudayaan & Kesenian Johor & Ors* [2010] 3 MLJ 145; [2010] 5 CLJ 865.

[20] In addition, learned counsel argued that the applicant should have appealed to the DGL as provided under s 4 of the Act if they were not satisfied with the compliance notice instead they did not do anything until the summons was issued.

The third respondent

[21] The learned senior federal counsel ('SFC') for the third respondent submitted that in arriving at the decision 10 April 2017 the presiding officer had given the opportunity to both counsels to appear and argued on the preliminary objection raised by the applicant. Hence, there was no error committed in the decision making process. The case of *Harpers Trading (M) Sdn Bhd v National Union of Commercial Workers* [1991] 1 MLJ 417; [1991] 1 CLJ Rep 159 was cited in support of the argument.

[22] It was further submitted by the learned SFC that the DGL was empowered under ss 69 and 70 of the Act to inquire and hear the complaint. The compliance notice being issued administratively and the real adjudication will be the inquiry by the presiding officer. Therefore, the compliance notice actually has no real effect.

DECISION

[23] The impugned decision made on 10 April 2017 was the ruling made by the presiding officer in holding an inquiry under s 69 of the Act. The said ruling came about after the applicant raised a preliminary objection during the mention date of the inquiry on 17 January 2017. Having made the ruling or decision the presiding officer ordered the parties to prepare to call witnesses and produce documents for the hearing of the inquiry. Hence, the impugned decision is not final. In *Taylor's College Sdn Bhd v Ketua Pengarah Kesatuan Sekerja Malaysia & Ors* [2009] 3 MLJ 437 Suriyadi JCA (as he then was) at pp 448–449 said:

> [22] Apart from the reason as prognosed above, this appeal could also be dismissed on the ground that the judicial review application by the appellant merely served to fragment the decision making process and hence premature. We were not convinced that a 'decision' existed here that was amenable to judicial review in the context of judicial or administrative proceedings. The decision of the first respondent could not be said to have effectively disposed of the matter whereby its decision was final and determinative of the issue under consideration.
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> [23] The High Court in *Australian Broadcasting Tribunal v Bond & Ors* 94 ALR 11 when considering whether a decision was amenable to judicial review under the provisions of the Administrative Decisions (Judicial Review) Act 1977 had occasion to remark:
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> > ... On the one hand, the purposes ... are to allow persons aggrieved by the administrative decision-making processes of government a convenient and effective means of redress and to enhance those processes. On the other hand, in so far as the ambit of the concept of 'decision' is extended, there is a greater risk that the efficient administration of government will be impaired ... To interpret 'decision' in a way that would involve a departure from the quality of finality would lead to fragmentation of the processes of administrative decision-making and set at risk the efficiency of the administrative process.

[24] In *Kaneka Paste Polymers Sdn Bhd v Director General of Industrial Relations & Ors* [2005] 7 MLJ 132 at p 136; [2005] 5 MLRH 86 at p 89 Raus J (as he then was) had this to say:

> 8. Looking at the whole scheme of s 9 above, I am in agreement with the learned senior federal counsel that the decision which can be reviewed under O 53 of the RHC must be the decision of the Minister under s 9(5). Section 9(1) to s 9(4C) merely prescribes the procedures to be taken by the DGIR and the DGTU. But the

> power to grant recognition can only be made by the Minister under s 9(5). No doubt the decision of DGTU conveyed to the applicant in a letter dated 29 March 200 was made under statutory authority, but not all decision made under statutory authority is subject to judicial review. To me, for a decision to be subjected to judicial review, it must go beyond what is merely administrative or procedural. Moreover in this case the process for the Union recognition is midway before the decision of a Minister under s 9(5). To entertain the applicant's application would hamper the smooth workings of a claim for recognition as it allows piece meal attacks at every stage of the decision process. Thus, the process for recognition should be allowed to proceed to enable the Minister to decide on the matter as provided by s 9(5).

Similarly, in this case before me, at the end of the day the applicant would be able to file an appeal against the decision of the inquiry. Clearly what the applicant is doing is to fragment the decision. It is a ruling rather than a decision which does not dispose of the rights of the applicant. Therefore, it is my considered view that the ruling is not amenable to judicial review.

[25] The Act does not provide for the issuance of the compliance notice and this was conceded by learned counsels for the respondents. According to both counsels the said notice was purely an administrative act. The Senior Deputy Director of Labour in his affidavit (encl 15) deposed that the compliance notice was issued to the applicant to enable the latter to take remedial steps following an internal inquiry. I do not think that the DGL has prejudged the issue by issuing the compliance notice as it has no binding effect. It is evident that when there was no response from the applicant, the summons was issued and the inquiry was set up. The question whether the matter was under sub-s 69(1)(a) or (b) of the Act will only be decided by the inquiry.

[26] I find that the compliance notice is unnecessary however it does not render the summons illegal. It is a separate and distinct from the summons. Inquiry under s 69 is independent and stand by itself and is not premised upon any initial investigation. Even if the compliance notice is illegal or unlawful, to my mind, the summons is not tainted. Similar situation can be found in habeas corpus cases eg a detention under the Dangerous Drug (Special Preventive Measures) Act 1985 where the investigation by the police is independent of the order under s 6 of the Internal Security Act 1960. In *L Rajanderan a/l R Letchumanan v Timbalan Menteri Dalam Negeri, Malaysia & Ors* [2018] Supp MLJ 393 at p 399; [2010] 7 CLJ 653 Abdull Hamid Embong FCJ referring to s 6(1)(a) of the Act at p 661 had this to say:

> The manner on conducting the investigations and arrests at this stage, is neither a condition precedent nor a matter which has a direct link with the detention order and thus not a ground for judicial review.

[27] If I were to allow this application by quashing the ruling which would amount to allowing the preliminary objection, that would be the end of the matter and the first and second respondents have no other recourse. I do not think that would be proper as here the proceedings have been instituted ie the inquiry and s 86 of the Act only provides where such proceedings have been withdrawn. As I said if the preliminary objection is upheld by quashing the ruling it means that the inquiry is set aside. If that is so the first and second respondents would not be able to institute a civil suit against the applicant.

[28] In the circumstance the application is dismissed with costs.

Application dismissed with costs.

Reported by Dzulqarnain Ab Fatar